

MUHAMMAD A. AZIZ,
Plaintiff,

CASE NO. 7:04CV00732

CENTRAL VIRGINIA REGIONAL JAIL,
Defendant.

) **By: Michael F. Urbanski**
) **United States Magistrate Judge**

Plaintiff Muhammad A. Aziz, a Connecticut inmate proceeding pro se, filed this civil rights action pursuant to 42 U.S.C. § 1983, with jurisdiction vested under 28 U.S.C. § 1343. In an Order dated February 13, 2005, this matter was referred to the undersigned magistrate judge for report and recommendation as to any dispositive motions. This matter is before the court for report and recommendation on defendant's motion to dismiss. Plaintiff has responded to defendant's motion. For the reasons discussed below, it is the recommendation that plaintiff's complaint be dismissed and this case stricken from the active docket of the court. Additionally, because plaintiff has not provided additional factual details regarding several of his claims as directed by the court in its February 25, 2005 Order, it is the recommendation of the undersigned that these claims be dismissed as well.

Plaintiff alleges that a number of his constitutional rights were violated during his incarceration at the Central Virginia Regional Jail (“Jail”). Particularly, plaintiff states that he made requests for religious materials and for access to religious services; for access to a law library and to materials necessary to draft pleadings in his court case; that some of the facilities at the Jail violated the “Standard Health Code;” that he was denied access to medical care; that he was required to give up his blanket during

daylight hours while the air conditioning was turned on such that he would be more susceptible to getting a cold; and that security patrols at the jail were insufficient to prevent injuries. (Compl. at 1-2.) He has requested injunctive relief including a penalty of \$100,000 for each day the Jail fails to comply with issues complained of here in. Id. at 3.

In another pleading, plaintiff stated that a Classification Officer at the Jail did not provide him with copies of “American Jurist” and that he later fabricated charges against plaintiff in administrative segregation. (Dec. 28, 2004 Pleading.) In a third pleading, plaintiff contends that he was denied access to the legal materials necessary to defend himself against this fabricated charge. (Jan. 12, 2005 Pleading.) Plaintiff appears to request injunctive relief in these two pleadings, namely that Jail officials be required to provide him access to legal materials.

II

Among other things, the Prison Litigation Reform Act (“PLRA”) requires the courts to dismiss any action filed by a prisoner which is (1) frivolous or (2) “which fails to state a claim upon which relief can be granted.” 28 U.S.C. § 1915(e)(2) and 1915A; 42 U.S.C. § 1997e(c). The second standard is the familiar standard for a motion to dismiss under Fed. R. Civ. P. 12(b)(6). Rule 12(b)(6) allows a court to dismiss claims based on dispositive issues of law. See Hishon v. King & Spalding, 467 U.S. 69, 73 (1984). A 12(b)(6) motion cannot be granted as a matter of law unless “it is clear that no relief could be granted under any set of facts that could prove consistent with the allegations.” Id. The court presumes all factual allegations in the complaint to be true and accords all reasonable inferences to the non-moving party. 2A Moore’s Federal Practice P12.07[2.5] (2d ed. 1994). In an action brought pursuant to 42 U.S.C. § 1983, a motion to dismiss the complaint for failure to state a claim under Rule

12(b)(6) should not be granted unless it appears beyond doubt that plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Conley v. Gibson, 355 U.S. 41, 45 (1957).

However, the court is not bound to accept as true “conclusory allegations regarding the legal effect of the facts alleged.” Labram v. Havel, 43 F.3d 918, 921 (4th Cir. 1995). While the court liberally construes pro se complaints, Gordon v. Leeke, 574 F.2d 1147, 1151 (4th Cir. 1978), it does not act as the inmate’s advocate, sua sponte developing statutory and constitutional claims the inmate failed to clearly raise on the fact of his complaint. See Brock v. Carroll, 107 F.3d 241, 243 (4th Cir. 1997) (Luttig, J., concurring); Cochran v. Morris, 73 F.3d 1310, 1314 (4th Cir. 1996) (en banc); Beaudett v. Hampton, 775 F.2d 1274, 1278 (4th Cir. 1985).

III

A

Defendant has moved to dismiss under Rule 12(b)(6) stating that plaintiff’s complaint should be dismissed as the Jail is not a “person” as set forth in 42 U.S.C. § 1983. Having reviewed the relevant case law, defendant’s motion must be granted. A cause of action under § 1983 is stated by alleging a deprivation of a right secured by the Constitution or other law of the United States by a person acting under color of state law. Neither “[s]tates nor governmental entities that are considered arms of the state for Eleventh Amendment purposes” are persons under § 1983. Will v. Mich. Dep’t of State Police, 491 U.S. 58, 70 (1989). In contrast, a municipality or other local government is considered a person under § 1983. Monell v. Dep’t of Social Servs., 436 U.S. 658, 690 (1978).

Therefore, the threshold question for determining if plaintiff has a cause of action against the Jail is whether the Jail is an entity of the state under the Eleventh Amendment. See Howlett By and

Through Howlett v. Rose, 496 U.S. 356 (1990) (“ . . . an entity with Eleventh Amendment immunity is not a ‘person’ within the meaning of § 1983 . . . and is not subject to suit under § 1983 in either federal or state court”). It is clear under the case law that jails such as defendant are not persons for the purposes of § 1983 analysis. See Jackson v. McMillan, 2005 U.S. Dist. LEXIS 8389, at **7-8 (May 6, 2005 W.D. Va.); McCoy v. Chesapeake Corr. Ctr., 788 F. Supp. 890, 893 (E.D. Va. 1992). As such, it is the recommendation of the undersigned that this case be dismissed and stricken from the active docket of the court.

B

Additionally, in an Order dated February 25, 2005, the court ordered plaintiff to provide further factual details regarding several of his claims. Specifically, the court directed plaintiff to describe any injuries he received as a consequence of the insufficient security of the Jail, to provide further details regarding the religious materials and services to which he was denied access, and to describe the nature of the legal action that was allegedly compromised by defendant’s alleged actions. See (Feb. 25, 2005 Order at 2-3.) At the time the court directed plaintiff to provide this additional information, the court stated that plaintiff’s failure to do so will result in a recommendation of dismissal of these claims.

Since the court’s February 25, 2005 Order, plaintiff filed a response to defendant’s motion addressed in this Report and Recommendation, but this document fails to provide any greater factual detail than previously included in his complaint. Plaintiff states that he did not receive a Qu’ran from defendant; that he did not attend religious services while housed at the Jail; that he did not have access to a law library and legal materials; that the conditions at the Jail were not agreeable to him; that he did not receive adequate medical care while housed there; and that the Jail had not been scrupulous in its

adherence to grievance procedures. (March 24, 2005 Resp. at 1-2.) Some of these allegations relate to claims the court that the court recommended dismissal of in its previous Report and Recommendation. See (February 25, 2005 Report and Recommendation at 4-6) (recommending dismissal of plaintiff's blanket claim, grievance claim, injunctive relief, and request for damages in situations where there was no allegation of physical injury). None of these statements, alone or in combination with the materials contained in plaintiff's complaint, provide defendant with enough information to defend itself against plaintiff's claims.

The court previously ordered plaintiff to provide further factual details. None of the additional details the court requested relating to plaintiff's remaining claims – for instance, what official at the jail he asked about religious services and when he did so; what legal action that he was pursuing was compromised by the Jail's failure to provide him access to legal materials; the ways in which this legal action was compromised; what injuries he has suffered resulting from allegedly lax security procedures at the Jail or allegedly unsanitary conditions; or details of any injuries he suffered through the allegedly inferior clothing issued him by prison officials – are addressed in plaintiff's response to any extent.

Plaintiff essentially restates the same unsupported allegations that are contained in his complaint; none of the allegations has enough detail to give defendant enough notice to defend itself as required under Rule 8 of the Federal Rules of Civil Procedure. As plaintiff has not provided the additional information as directed by the court in its earlier Order, it is the recommendation of the undersigned that these claims be dismissed.

IV

The Clerk of the Court is directed immediately to transmit the record in this case to the Honorable Samuel G. Wilson, United States District Judge. Both sides are reminded that pursuant to Rule 72(b) they are entitled to note any objections to this Report and Recommendation within ten (10) days hereof. Any adjudication of fact or conclusion of law rendered herein by the undersigned not specifically objected to within the period prescribed by law may become conclusive upon the parties. Failure to file specific objections pursuant to 28 U.S.C. § 636(b)(1)(C) as to factual recitations or findings as well as to the conclusions reached by the undersigned may be construed by any reviewing court as a waiver of such objection.

The Clerk of the Court is hereby directed to send a certified copy of this Report and Recommendation to plaintiff and counsel of record.

ENTER: This 31st day of May, 2005.

/s/ Michael F. Urbanski
United States Magistrate Judge